



ORDER BELOW EXHIBIT 23

Plaintiffs are seeking to add subsequent purchaser as party defendant in present suit. As per them on 09.08.2021, defendants No.2, in collusion with defendant No.1,3 to 7 has sold out land in block No.103/C adm.80R out of land adm.1H, situated at Village Dokewadi, Tq. Bhoom, Dist. Osmanabad to proposed defendant namely Krantisingh Bhagwan Raut by executing registered sale deed bearing No. 1499/2021. Likewise, defendants No.2 to 4, in collusion with defendant No.1, 5 to 7 has sold out land in block No.103/C adm.20R out of land adm.1H, situated at Village Dokewadi, Tq. Bhoom, Dist. Osmanabad to proposed defendant namely Mahadev Pandurang Chaudhar and Pandurang Prakash Chaudhar by executing registered sale deed bearing No. 1500/2021 dated 09.08.2021.

02. According to plaintiffs, the said sale deed being illegal, not binding upon the plaintiffs and the purchasers being the subsequent purchasers during the pendency of suit is necessary party required to be added as defendant No.7 in present suit.

03. Defendants have filed their say on back leaf of the application. It is submitted by defendants that the contents of present application are not true and correct and therefore not accepted or admitted by them. Plaintiffs cannot amend their suit as per prayer. Plaintiffs don't have any concerned with the suit property, just to harass them, plaintiffs have filed suit and present application which require to be rejected. Thus, they prayed for

rejecting application in alternate they prayed to impose heavy cost of Rs.5000/- in case application is allowed.

04. Perused the record. Heard the arguments advanced by advocate of the plaintiff. Following points arise for my determination and my findings thereon and reasons thereof are as follows:

	Points	Findings
1.	Whether plaintiff satisfy that proposed defendant is necessary party in the present suit?	NO
2.	What order?	The application is rejected.

REASONS

AS TO POINT NO. 1

05. It is fact that suit is filed on dated 19.12.2019. It is also clear from application of plaintiffs itself that defendants had sold out portion of suit property on dated 09.08.2021 means it was during the pendency of suit. In this background it is required to see whether proposed defendants are necessary parties or not.

06. In Bhogadi Kannababu Vs. Vuggina Pydamma 2006(3) M.L.J 105, the Supreme Court had held that, “In an application for impleadment under Order I Rule 10 of CPC, the Court would only decide whether the presence of the applicant would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. But the question of the strict proof whether the applicants were also entitled to the right involved in the proceedings, may not be germane for decision.”

07. In *Amit Kumar Shah Vs. Farida Khatton* 2005 (4) CTC 47, it had been held that the object of Order 1 Rule 10 of the CPC, is to discourage contests on technical pleas and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under the above Rule, a person may be added as a party to suit only in the following two cases: (1) when he ought to have been joined as plaintiff or defendant, and is not joined so, or (2) when, without his presence, the questions in the suit cannot be completely decided. The power of the Court to add a party to the proceedings can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

08. Necessary party is one without whom no order can be made effectually and proper party is one whose presence is necessary for the complete and final decision on the issue involved in the proceedings. Therefore, the addition of parties would depend upon the judicial discretion which has to be exercised, according to facts and circumstances of each case. The person to be joined must be one whose presence is necessary as party to the suit. What makes a person a necessary party is not merely that he is a share holder in the survey number involved in the suit.

09. As per Order I Rule 10(2) of Civil Procedure Code (hereinafter referred to as "CPC" for brevity), the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any

person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

10. Accordingly, Court has discretion to add as party who ought to have been joined or whose presence before Court may be necessary in order to effectually and completely to adjudicate suit. As per plaintiffs defendants No.2, 3 & 4 had sold out portion of suit property during the pendency of suit, thereby, neither they are necessary parties, nor their presence is necessary to settle questions involved in the suit. In this background it will be helpful to see what is rule of lis pendens and what is right and liability of purchaser during lis pendens.

11. In section 52 of Transfer of Property Act, 1882 reads as under:

Section 52. Transfer of property pending suit relating thereto: *During (pendency) in any Court having authority [(within the limit of India excluding the State of Jammu and Kashmir) or established beyond such limits] by [the Central Government] of [any] suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transfer or otherwise dealt with by any party to the suit or proceeding so as to effect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may imposed.*

[Explanation: For the purpose of this section, the pendency of suit or proceeding shall be being to be commenced from the date of the presentation of the plaint or the institution of the proceeding in the Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete

satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

12. From bare reading of above section it is clear that the rule of *lis pendens* is that during the pendency of any suit or proceeding in any Court having authority which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of other party thereto under any decree or order which may be made therein, except under the authority of Court and on such terms as it may impose. In explanation it is provided that pendency of a suit or proceeding means commencement from the date of presentation of the plaint in Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained.

13. In the light of this legal position it is clear that during the pendency of suit in the competent Court in which immovable property is directly and specifically in question, then such property cannot be transferred or dealt with by any party to the suit which will affect right of other party which will be decided on property can not be transferred, so as to effect the right of other party thereto under any decree or order which may be made therein except the under authority of the Court. In the case on hand it is itself clear that plaintiffs have sought relief of declaration of suit property. Hence, immovable property i.e. suit property is directly and specifically in question in this suit, so parties to suit have no authority to transfer or deal with it which will affect the right of other party. Defendants were bound to refrain from alienating suit property, but they have sold out.

Proposed defendants being purchaser of portion of suit property during the pendency of suit, is in the shoes of defendant No.2, 3 & 4. They have no independent right, but of defendant No.2, 3 & 4 which will be decided in the suit after final adjudication. This suit is of year 2019, so having bar of section 52 of the Transfer of Property Act, 1882 and such impleadment will unnecessarily complicate and delay proceeding.

14. In the case in hand plaintiff is seeking decree of declaration of ownership. In this background whatever the fate of suit it is binding on proposed defendants as purchaser from party of suit i.e. defendant No.2, 3 & 4 during pendency of suit. There is no substance in the submission of learned advocate of the plaintiff that proposed defendants are necessary parties or their presence is necessary to decide dispute finally. Even though they are not added as party to the suit, this Court is competent to decide question directly and specifically in respect of immovable property mentioned in the suit in their absence. It is fact that by purchasing portion of suit property during the pendency of suit from defendant incurred risk of facing consequences of decision of suit.

15. In the light of above discussion and provisions of law, this court came on conclusion the the proposed defendants are neither necessary nor proper party to the suit. Hence, following order is passed:

ORDER

Application at **Exhibit No.23** is rejected.

Date: 01.02.2023

(Husna R. Khan)
2nd Jt. Civil Judge, J.D.,
Bhoom.

Certificate

I affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Order Typed by	...	Concern Clerk
Court	...	2 nd Jt.CJJD & JMFC Bhoom
Date	...	01-02-2023
Order signed by the Presiding Officer on	...	01-02-2023
Order uploaded on	...	01-04-2023
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